

Fair Political Practices Commission

Memorandum

To: Chairman Getman, Commissioners Downey, Knox, and Swanson
From: Scott Burritt, Executive Fellow
Subject: Assembly Member Harman's request for sponsorship on AB 1797
Date: March 4, 2002

Assembly Bill 1797 (Harman) would add §87105 to the Political Reform Act (the Act), providing that an office holder specified in §87200¹ who has a financial interest in a decision must:

- (a) publicly state the specific nature of the conflict of interest in sufficient detail to be understood by the public;
- (b) recuse himself or herself from discussing and voting on the matter; and
- (c) leave the room until the matter is concluded.

According to the author's office, this bill was introduced as a result of the conduct of Huntington Beach City Councilman David P. Garofalo. Garofalo entered into a stipulated agreement with the Commission in January of this year in which he admitted to 24 counts of violating financial disclosure, campaign reporting, and gift limit provisions of the Political Reform Act.

The author has requested the Commission's sponsorship of this measure, and is willing to work with the Commission on amendments. A copy of AB 1797 is attached, as well as a mock-up version reflecting amendments the author plans to incorporate into the bill.

Existing Law and Regulations

Under existing law, a public official is already prohibited from taking part in governmental decisions in which he or she has a financial interest.² For this reason, the language proposed in subdivision (b) of §87105 restates existing law.

¹ §87200 provides: "This article is applicable to elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election."

² §87100 provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

Subdivisions (b) and (c) of Commission Regulation 18702.1 set forth the obligations of a public official with a conflict of interest in a governmental decision:

(b) When an official with a disqualifying conflict of interest abstains from making a governmental decision in an open session of the agency and the official remains on the dais or in his or her designated seat during deliberations of the governmental decision in which he or she is disqualified, his or her presence shall not be counted toward achieving a quorum.

(c) During a closed meeting of the agency, a disqualified official shall not be present when the decision is considered or obtain or review a recording or any non-public information regarding the governmental decision.

The Commission's comment to this Regulation provides: "Nothing in this section authorizes or prohibits an agency by local rule or custom from requiring a disqualified member to step down from the dais and/or leave the chambers."

In addition, Regulation 18702.1, provides for permissive disclosure in the last sentence of subsection (a)(5):

When the determination not to act occurs because of the official's financial interest, the official's determination may be accompanied by an oral or written disclosure of the financial interest.

Background

In October 2000, the Commission considered amendments to Regulation 18702.1, a regulation that, at that time, mandated disclosure of disqualifying financial interests as provided for in this bill. The Commission voted 4-1 to reject mandatory disclosure in favor of the permissive disclosure contained in the prior paragraph. The staff memorandum and minutes related to that regulatory amendment are attached in order to document the issues the Commission considered in coming to that decision.

Also at that October 2000 Commission meeting, Tom Haas, representing the League of California Cities, expressed his concern that many agendas have numerous items on the consent calendar, and that requiring public officials to leave the room would substantially lengthen meetings. The attached mock-up of proposed author's amendments provide that a public official is not required to leave the room when a matter involving his or her financial interest is on the consent calendar.

We are advised that the League of California Cities is currently neutral on this bill.

Discussion and Policy Considerations

This measure proposes two substantive changes to existing law: 1) a requirement that a public official with a disqualifying conflict of interest disclose the nature of his or her financial interest; and 2) that the public official leave the room during any discussion related to his or her financial interest. It is worth noting that the provisions of these bills would apply to both public meetings

and the more routine daily decision making of the public officials set forth in §87200. While the temptation is to think of the bill in the context of the city council or planning commission meetings, the bill applies as well to the prosecutorial decisions of a district attorney, the fund transfers of a city treasurer, or the internal staff policy discussions of a county counsel.

The following table sets forth some of the policy considerations in support of and against each of these two provisions.

Disclosure

Support	Against
Public disclosure is strongly favored under the Act.	SEI disclosure and recusal are sufficient protections against self-dealing.
Disclosure will reduce instances where public officials use the Act as a means of avoiding controversial decisions.	Problematic in instances of absence, especially where the decision may be the only one on the agenda.
Previous disclosure requirement did not give rise to enforcement problems.	Disclosure could create enforcement workload over non-disclosure even where official recuses herself.
	May lead to reluctance to abstain out of caution if doing so requires admission of a definite conflict.
	Problematic in the non-meeting context. What form of publication would be required?

Official to Leave Room

Support	Against
Avoids subtle forms of influence.	Difficult to determine whether conflict exists without hearing scope of proposal.
Already required in closed-session meetings.	Problematic when public official wishes to participate as a member of the public; may be unconstitutional unless allowed to participate.
Would aid enforcement of conflict statutes.	Unworkable as worded in consent calendar context.

There is one drafting question: the author's office informs the Commission that it is the author's intent that the bill apply only to the officials set forth in §87200. The bill, however, begins "A public official *and* a person who holds an office specified in Section 87200" To clarify the author's intent, staff recommends deletion of the words "A public official and" in this sentence.

Staff Recommendation: Sponsorship is traditionally reserved for bills originating with the Commission; for this reason, staff recommends against sponsoring this measure. In addition, the Commission just 18 months ago had a lengthy policy discussion on this very topic, with significant public input, and rejected the substantive changes proposed in this bill. For these reasons, staff recommends the Commission take no position on the bill.